

1 Michael B. Bernacchi (SBN 163657)
2 E-mail: mbernacchi@bwslaw.com
3 Edith Sanchez Shea (SBN 177578)
4 E-mail: eshea@bwslaw.com
5 Keiko J. Kojima (SBN 206595)
6 E-mail: kkojima@bwslaw.com
7 BURKE, WILLIAMS & SORENSEN, LLP
8 444 South Flower Street, Suite 2400
9 Los Angeles, CA 90071-2953
10 Tel: 213.236.0600 Fax: 213.236.2700

NOTE: CHANGES MADE BY THE COURT

11 Attorneys for Defendant
12 Hartford Life and Accident Insurance Company

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 FOROUD FOLADPOUR,
17 Plaintiff,

Case No. 8:13-CV-01722-JLS-JPR

18 v.
19 HARTFORD LIFE AND ACCIDENT
20 INSURANCE COMPANY, a
21 Connecticut corporation, and DOES 1
22 to 10, inclusive,

**STIPULATED PROTECTIVE
ORDER**

23 Defendants.

24 1. **PURPOSES AND LIMITATIONS**

25 Disclosure and discovery activity in this action are likely to involve
26 production of confidential, proprietary, or private information for which special
27 protection from public disclosure and from use for any purpose other than
28 prosecuting this litigation may be warranted. Accordingly, the parties hereby
stipulate to and petition the court to enter the following Stipulated Protective Order.
The parties acknowledge that this Order does not confer blanket protections on all
disclosures or responses to discovery and that the protection it affords from public
disclosure and use extends only to the limited information or items that are entitled
to confidential treatment under the applicable legal principles. The parties further

1 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
 2 Order does not entitle them to file confidential information under seal; Civil Local
 3 Rule 79-5.1 sets forth the procedures that must be followed and the standards that
 4 will be applied when a party seeks permission from the court to file material under
 5 seal.

6 **2. DEFINITIONS**

7 2.1 **Challenging Party**: a Party or Non-Party that challenges the
 8 designation of information or items under this Order.

9 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of
 10 how it is generated, stored or maintained) or tangible things that qualify for
 11 protection under Federal Rule of Civil Procedure 26(c).

12 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House
 13 Counsel (as well as their support staff).

14 2.4 **Designating Party**: a Party or Non-Party that designates information or
 15 items that it produces in disclosures or in responses to discovery as
 16 “CONFIDENTIAL.”

17 2.5 **Disclosure or Discovery Material**: all items or information, regardless
 18 of the medium or manner in which it is generated, stored, or maintained (including,
 19 among other things, testimony, transcripts, and tangible things), that are produced
 20 or generated in disclosures or responses to discovery in this matter.

21 2.6 **Expert**: a person with specialized knowledge or experience in a matter
 22 pertinent to the litigation who has been retained by a Party or its counsel to serve as
 23 an expert witness or as a consultant in this action.

24 2.7 **House Counsel**: attorneys who are employees of a party to this action.
 25 House Counsel does not include Outside Counsel of Record or any other outside
 26 counsel.

27 2.8 **Non-Party**: any natural person, partnership, corporation, association,
 28 or other legal entity not named as a Party to this action.

1 2.9 Outside Counsel of Record: attorneys who are not employees of a
 2 party to this action but are retained to represent or advise a party to this action and
 3 have appeared in this action on behalf of that party or are affiliated with a law firm
 4 which has appeared on behalf of that party.

5 2.10 Party: any party to this action, including all of its officers, directors,
 6 employees, consultants, retained experts, and Outside Counsel of Record (and their
 7 support staffs).

8 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
 9 Discovery Material in this action.

10 2.12 Professional Vendors: persons or entities that provide litigation
 11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 13 and their employees and subcontractors.

14 2.13 Protected Material: any Disclosure or Discovery Material that is
 15 designated as “CONFIDENTIAL.”

16 2.14 Receiving Party: a Party that receives Disclosure or Discovery
 17 Material from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only
 20 Protected Material (as defined above), but also (1) any information copied or
 21 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 22 compilations of Protected Material; and (3) any testimony, conversations, or
 23 presentations by Parties or their Counsel that might reveal Protected Material.
 24 However, the protections conferred by this Stipulation and Order do not cover the
 25 following information: (a) any information that is in the public domain at the time
 26 of disclosure to a Receiving Party or becomes part of the public domain after its
 27 disclosure to a Receiving Party as a result of publication not involving a violation
 28 of this Order, including becoming part of the public record through trial or

1 otherwise; and (b) any information known to the Receiving Party prior to the
 2 disclosure or obtained by the Receiving Party after the disclosure from a source
 3 who obtained the information lawfully and under no obligation of confidentiality to
 4 the Designating Party. Any use of Protected Material at trial shall be governed by a
 5 separate agreement or order.

6 **4. DURATION**

7 Even after final disposition of this litigation, the confidentiality obligations
 8 imposed by this Order shall remain in effect until a Designating Party agrees
 9 otherwise in writing or a court order otherwise directs. Final disposition shall be
 10 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
 11 or without prejudice; and (2) final judgment herein after the completion and
 12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 13 including the time limits for filing any motions or applications for extension of time
 14 pursuant to applicable law.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
 17 Each Party or Non-Party that designates information or items for protection under
 18 this Order must take care to limit any such designation to specific material that
 19 qualifies under the appropriate standards. The Designating Party must designate for
 20 protection only those parts of material, documents, items, or oral or written
 21 communications that qualify – so that other portions of the material, documents,
 22 items, or communications for which protection is not warranted are not swept
 23 unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
 25 that are shown to be clearly unjustified or that have been made for an improper
 26 purpose (e.g., to unnecessarily encumber or retard the case development process or
 27 to impose unnecessary expenses and burdens on other parties) expose the
 28 Designating Party to sanctions. If it comes to a Designating Party's attention that

1 information or items that it designated for protection do not qualify for protection,
 2 that Designating Party must promptly notify all other Parties that it is withdrawing
 3 the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
 5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 7 under this Order must be clearly so designated before the material is disclosed or
 8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
 11 documents, but excluding transcripts of depositions or other pretrial or trial
 12 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
 13 page that contains protected material. If only a portion or portions of the material
 14 on a page qualifies for protection, the Producing Party also must clearly identify the
 15 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
 16 or Non-Party that makes original documents or materials available for inspection
 17 need not designate them for protection until after the inspecting Party has indicated
 18 which material it would like copied and produced. During the inspection and
 19 before the designation, all of the material made available for inspection shall be
 20 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
 21 documents it wants copied and produced, the Producing Party must determine
 22 which documents, or portions thereof, qualify for protection under this Order.
 23 Then, before producing the specified documents, the Producing Party must affix the
 24 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
 25 portion or portions of the material on a page qualifies for protection, the Producing
 26 Party also must clearly identify the protected portion(s) (e.g., by making
 27 appropriate markings in the margins).

28 ///

(b) for testimony given in deposition proceedings, that the Designating Party identify on the record, before the close of the deposition, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the

1 Protective Order. The parties shall attempt to resolve each challenge in good faith
 2 and must begin the process by conferring directly (in voice to voice dialogue; other
 3 forms of communication are not sufficient) within 10 days of the date of service of
 4 notice. In conferring, the Challenging Party must explain the basis for its belief that
 5 the confidentiality designation was not proper and must give the Designating Party
 6 an opportunity to review the designated material, to reconsider the circumstances,
 7 and, if no change in designation is offered, to explain the basis for the chosen
 8 designation. A Challenging Party may proceed to the next stage of the challenge
 9 process only if it has engaged in this meet and confer process first or establishes
 10 that the Designating Party is unwilling to participate in the meet and confer process
 11 in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
 13 court intervention, the Designating Party shall file and serve a motion to retain
 14 confidentiality under Local Rule 37, including the joint stipulation provision (and in
 15 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial
 16 notice of challenge or within 14 days of the parties agreeing that the meet and
 17 confer process will not resolve their dispute, whichever is earlier. Each such
 18 motion must be accompanied by a competent declaration affirming that the movant
 19 has complied with the meet and confer requirements imposed in the preceding
 20 paragraph and in Rule 37. Failure by the Designating Party to make such a motion
 21 including the required declaration within 21 days (or 14 days, if applicable) shall
 22 automatically waive the confidentiality designation for each challenged designation.
 23 Any motion brought pursuant to this provision must be accompanied by a
 24 competent declaration affirming that the movant has complied with the meet and
 25 confer requirements imposed by the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the
 27 Designating Party. Frivolous challenges, and those made for an improper purpose
 28 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the Challenging Party to sanctions. Unless the Designating Party has
 2 waived the confidentiality designation by failing to file a motion to retain
 3 confidentiality as described above, all parties shall continue to afford the material in
 4 question the level of protection to which it is entitled under the Producing Party's
 5 designation until the court rules on the challenge.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
 disclosed or produced by another Party or by a Non-Party in connection with this
 case only for prosecuting, defending, or attempting to settle this litigation. Such
 Protected Material may be disclosed only to the categories of persons and under the
 conditions described in this Order. When the litigation has been terminated, a
 Receiving Party must comply with the provisions of section 13 below (FINAL
 DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a
 location and in a secure manner that ensures that access is limited to the persons
 authorized under this Order.

7.2 **Disclosure of "CONFIDENTIAL" Information or Items.** Unless
 otherwise ordered by the court or permitted in writing by the Designating Party, a
 Receiving Party may disclose any information or item designated
 "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action,
 as well as employees of said Outside Counsel of Record to whom it is reasonably
 necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House
 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
 litigation and who have signed the "Acknowledgment and Agreement to Be
 Bound" (Exhibit A);

28

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission or a court so orders. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

///

1111

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal

1 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 2 whatever procedure may be established in an e-discovery order that provides for
 3 production without prior privilege review. Pursuant to Federal Rule of Evidence
 4 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
 5 of a communication or information covered by the attorney-client privilege or work
 6 product protection, the parties may incorporate their agreement in the stipulated
 7 protective order submitted to the court. No such agreement will have the force or
 8 effect of a Court order without the Court's prior approval.

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 11 person to seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 13 Protective Order no Party waives any right it otherwise would have to object to
 14 disclosing or producing any information or item on any ground not addressed in this
 15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
 16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the
 18 Designating Party or a court order secured after appropriate notice to all interested
 19 persons, a Party may not file in the public record in this action any Protected
 20 Material. A Party that seeks to file under seal any Protected Material must comply
 21 with Civil Local Rule 79-5.1. Protected Material may only be filed under seal
 22 pursuant to a court order authorizing the sealing of the specific Protected Material
 23 at issue. Pursuant to Civil Local Rule 79-5.1, a sealing order will issue only upon a
 24 request establishing that the Protected Material at issue is privileged, protectable as
 25 a trade secret, or otherwise entitled to protection under the law. If a Receiving
 26 Party's request to file Protected Material under seal pursuant to Civil Local Rule
 27 79-5.1 is denied by the court, then the Receiving Party may file the information in
 28

1 the public record unless otherwise instructed by the court.

2 ///

3 13. **FINAL DISPOSITION**

4 Within 60 days after the final disposition of this action, as defined in
 5 paragraph 4, each Receiving Party must return all Protected Material to the
 6 Producing Party or destroy such material upon request of the Producing Party. As
 7 used in this subdivision, “all Protected Material” includes all copies, abstracts,
 8 compilations, summaries, and any other format reproducing or capturing any of the
 9 Protected Material. Whether the Protected Material is returned or destroyed, the
 10 Receiving Party must submit a written certification to the Producing Party and, if
 11 not the same person or entity, to the Designating Party), after the request of the
 12 Producing/Designating party, by the 60 day deadline, that (1) identifies (by
 13 category, where appropriate) all the Protected Material that was returned or
 14 destroyed and (2) affirms that the Receiving Party has not retained any copies,
 15 abstracts, compilations, summaries or any other format reproducing or capturing
 16 any of the Protected Material. Notwithstanding this provision, Counsel are entitled
 17 to retain an archival copy of all pleadings, motion papers, trial, deposition, and
 18 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
 19 expert reports, attorney work product, and consultant and expert work product, even
 20 if such materials contain Protected Material. Any such archival copies that contain
 21 or constitute Protected Material remain subject to this Protective Order as set forth
 22 in Section 4 (DURATION).

23 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

24

25

26

27

28

1 DATED: August 4, 2014

/s/ Scott E. Calvert [as
authorized on 8/1/14]

2 Scott E. Calvert
3 Attorneys for Plaintiff Foroud
Foladpour

4 DATED: August 4, 2014

/s/ Edith S. Shea

5 Edith S. Shea
6 Attorneys for Defendant Hartford
Life and Accident Insurance
Company

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8 DATED: August 6, 2014

Jean Rosenbluth

9 Hon. Jean P. Rosenbluth,
10 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

11 I, _____ [print or type full name],
12 of _____ [print or type full address],
13 declare under penalty of perjury that I have read in its entirety and understand the
14 Stipulated Protective Order that was issued by the United States District Court for
15 the Northern District of California on [date] in the case of *Foroud Foladpour v.*
16 *Hartford Life and Accident Insurance Company* – Case No.: 8:13-CV-01722 –
17 JLS-JPR. I agree to comply with and to be bound by all the terms of this Stipulated
18 Protective Order and I understand and acknowledge that failure to so comply could
19 expose me to sanctions and punishment in the nature of contempt. I solemnly
20 promise that I will not disclose in any manner any information or item that is
21 subject to this Stipulated Protective Order to any person or entity except in strict
22 compliance with the provisions of this Order. I further agree to submit to the
23 jurisdiction of the United States District Court for the Central District of California
24 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
25 such enforcement proceedings occur after termination of this action. I hereby
26 appoint _____ [print or type full name] of
27 _____ [print or type full address and telephone number]

1 as my California agent for service of process in connection with this action or any
2 proceedings related to enforcement of this Stipulated Protective Order.

3
4 Date: _____

5 City and State where sworn and signed: _____

6 Printed name: _____

7
8 Signature: _____

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28